IN THE HIGH COURT OF JUDICATURE

DATED: 17.10.2006

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

Criminal Appeal No.383 of 2004

Poonaiyan @ Selvaraman .. Appellant/ Accused

Vs.

State rep. by Inspector of Police
Kalasapakkam Police Station
Tiruvannamalai District. .. Respondent/ Complainant
Crime No.88/2002

Appeal under Section 374 of Cr.P.C against the judgment dated 29.1.2004 made in S.C.No.50 of 2003 on the file of learned Principal Sessions Judge, Vellore, Vellore District.

For Appellant : Mr.N. Senthil Kumar
Amicus Curiae

For Respondent : Mr.N.R.Elango
Addl. Public Prosecutor

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The appellant stands convicted in Sessions Case No.50 of 2003 on the file of the Principal Sessions Court, Vellore for an offence under section 302 IPC and sentenced to undergo life imprisonment.

2. The accused husband with the intention to murder his wife Vijaya, on 21.4.2002 at about 10.00 p.m., in front of his house, beat her with stick and stabbed with knife and caused her instantaneous death and thereby committed the offence punishable under section 302 IPC.

3. The prosecution set out its case as follows:

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3.1. The deceased is the wife of the accused. They got married seven years prior to the date of occurrence. They had two sons and one daughter out of their wedlock. Their marital life was happy for six years. Since the accused had illicit intimacy with one Vasantha, he ill-treated the deceased.

3.2. On 21.4.2002 at 10.00 am, the deceased, along with the children, went to P.W.3's house, who is nonetheless her maternal aunt at Thandayankottai. In the evening at about 8.00 pm, uttering that the accused would beat her if she was not in the house and if P.W.3 questioned, he would beat P.W.3 also, left the house of P.W.3. She also stated that she would either live or die in their house.

3.3. P.W.3 went to the house of P.W.1 and P.W.2, who are the mother and father of the deceased at Karpanangkollai, which is 5 kms away from Thandayankottai and informed them what had transpired at her residence. P.W.1 and P.W.2 went to Suruttaiyankollai, the place of the deceased at about 10.00 pm. At that time, the accused beat the deceased with stick, M.O.1 and cut the deceased with knife, M.O.2. When they intervened, they were physically stopped and warned by the accused that they would also meet the same fate. Thereafter, the accused left the place.

3.4. On the next day, P.Ws.1 and 2 informed one Ooran Rajendiran about the occurrence. He asked them to give complaint to the Village Administrative Officer. P.Ws.1 and 2 went and informed the Village Administrative Officer at Odukathur at about 4 pm, who directed them to give a complaint in the Police Station. As there was no conveyance, they went to the Police Station at Jamunamarathur next day, along with Village Menial, P.W.4 and lodged a complaint Ex.P7 to the Sub Inspector of Police P.W.7.

3.5. P.W.7 registered a case in Crime No.88 of 2002 under Section 302 IPC and prepared the printed FIR, Ex.P8. He informed the same to P.W.8, Inspector of Police, Kalasapakkam Police Station.

3.6. The investigation of the case was taken up by P.W.8, who reached the place of occurrence at about 1.00 pm along with P.Ws.1, 2 and 4. He prepared Observation Mahazar Ex.P2, rough sketch Ex.P9 and inquest report Ex.P10. He seized M.O.2, wooden stick under Mahazar Ex.P3.

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3.7. P.W.6, Police Constable took the dead body for post mortem along with requisition Ex.P5.

3.8. Autopsy on the dead body of the deceased was conducted by P.W.5 on 24.4.2002 at about 11.00 am who found the following external and internal injuries.

Lacerated injury 2 x 1 cm seen over right side of forehead.

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Lacerated injury 2 x 1.50 cm above the left eye brow.

Small lacerated injuries seen over the forehead especially over left side.

Contusion seen near left eye.

Lacerated injury near the right wrist.

Lacerated injury 3 x 2 cm near left heel.

Lacerated injury 1 cm seen in between the eye brows.

Contusion over left lower lip.

Contusion 1 cm x 1 cm seen below left breast.

Peeling of cuticle present.

Opening of thorax: No fracture ribs. Heart empty. Lungs: Congested odematous and friable. Hyoid bone: Intact.

Opening of abdomen: Abdomen distended. Bowels distended.

Opening of stomach: Putrified gas present.
Liver: Congested and friable.
Spleen, kidneys congested and friable.
Intestine distended.
Uterus: Normal size empty.

Opening of skull: Crack linear fracture of 4 cm seen on the left frontal region of skull. Subdural clots seen on the left side. Brain tissue friable and partly liquified.

The post mortem certificate issued by P.W.5 opining that the deceased would appear to have died of head injury 70 to 80 hours prior to autopsy is Ex.P6.

3.9. P.W.8 arrested the accused on 24.4.2002 at about 1.00 pm in the presence of P.W.4 and another. He obtained confession statement of accused and the admissible portion of the same is Ex.P13. M.O.1, knife and M.O.3 khaki colour shorts were seized from the accused under Mahazar Ex.P4.

3.10. The material objects were sent to the Court along with requisition Ex.P14 for subjecting the same to Chemical analysis. Exs.P15 and P16 are Biologist and Serologist report.

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3.11. P.W.8 completed the investigation and filed a final report against the accused under Section 302 IPC on 26.5.2002.

3.12. As the charge was denied by the accused, he was tried in S.C.No.50 of 2003 on the file of learned Principal Sessions Judge, Vellore, Vellore District. In order to substantiate the charge levelled against the accused, the prosecution examined P.Ws.1 to 8 and marked Exs.P1 to P16 and M.Os.1 to 6.

4. When the accused was questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence of prosecution witnesses, he denied the same as false. The accused neither examined any witness, nor marked any document.

5. The trial Court, appreciating the evidence on record, both oral and documentary, convicted and sentenced the accused as stated earlier. Exasperated by the judgment of conviction and sentence, the accused has preferred this appeal.

6. Mr.N.Senthil Kumar, learned counsel appearing for the appellant, who was appointed by this Court as Amicus Curiae, assails the conviction and sentence of the accused on the following grounds:

(a) The delay of nearly two days in lodging the complaint annuls the case of the prosecution;

(b) The presence of P.Ws.1 and 2 at the time of occurrence is unbelievable, on account of the distance between the place of P.W.3 and P.Ws.1 & 2 and also the deceased. Therefore, their evidence as eye-witnesses is not trustworthy. Consequently, the case of the prosecution, which is based on Ex.P1, complaint lodged by P.Ws.1 and 2 is not well founded;

(c) The evidence of P.W.1 that she shouted on seeing the accused beating the deceased, but no neighbours came for rescue, cannot be accepted in view of the fact that there are four houses near the house of the accused, as per the rough sketch, Ex.P9 and accordingly, the evidence of P.W.1 is not credible;

(d) As per the evidence of P.Ws.1 and 2, the accused cut the deceased with knife. But, the injuries found in the post mortem certificate Ex.P6 does not relate to any cut injury and therefore, their evidence as to the overt act attributed against the accused is unbelievable;

(e) M.Os.1 and 2 were seized in the place of occurrence under mahazar Ex.P2, as per the evidence of P.W.4 in cross. But, as per Ex.P4, Seizure Mahazar, M.O.1 knife was seized from the

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accused, which was kept in his khaki colour short with blood stains. Therefore, the contradiction in the evidence of P.W.4 would belie the case of the prosecution; and

(f) Specific case of P.W.1 is that the accused was wearing lungi at the time of occurrence. On the other hand, prosecution case is that they seized M.O.1 knife from the accused. If the version of P.W.1 is true that the accused was wearing lungi at the time of occurrence, there is no possibility of the khaki colour shorts having blood stains. Therefore, the evidence of P.W.1 has to be disregarded.

7. Countering the arguments of the learned counsel for the appellant, the submissions of Mr.N.R.Elango, learned Additional Public Prosecutor are thus:

(a) The distance between the place of occurrence and the police station is 80 kms. From Surutaiyan Kollai of Alleri group of village, where the occurrence had taken place, there is no transport facility to Odukathur and have to go by walk for about 8 to 10 hours. Since P.Ws.1 and 2 reached Odukathur at about 4 pm and were tired by walking and there is no conveyance in the evening, they went to the Police Station in the next day morning and lodged the complaint. The above delay cannot be fatal to the case of the prosecution;

(b) Even though P.W.1 shouted on seeing the accused beating the deceased, the neighbours did not come for the rescue, since the occurrence took place in the night hours and the same cannot be a ground to disbelieve the evidence of P.W.1;

(c) Even though there is a contradiction in the evidence of P.W.4 and Seizure Mahazar Ex.P4 with regard to the seizure of M.O.1, knife, the same would not falsify the case of the prosecution, as the M.O.1 contained human blood, as per the Biologist Report Ex.P15 and Serologist report Ex.P16, which would also prove the overt acts attributed to the accused by P.Ws.1 and 2.

(d) Similarly, the confession statement given by the accused at the time of his arrest, the admissible portion of which is marked as Ex.P13, would establish that the knife was seized from the accused and the khaki colour shorts, which he was wearing, contained blood stains. Further, when the same were sent for chemical analysis, it was reported that the khaki colour shorts and the knife contained human blood. Therefore, the evidence of P.W.1 that the accused was wearing lungi would not affect the case of the prosecution.

8. We have given careful consideration to the submissions of both sides and also perused the materials on record.

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9. The point for consideration in this appeal is whether the prosecution has brought home the guilt of the accused beyond reasonable doubt.

10. It is not in dispute that the accused and the deceased got married seven years prior to the date of occurrence and were residing at Surutaiyan Kollai, Alleri. They were living happily for six years and thereafter, due to the illicit intimacy with one lady called, Vasantha, the accused started ill-treating his deceased wife. The above fact is spoken to by P.Ws.1 to 3, parents and maternal aunt of the deceased. They are residing at various places, but they have stated in their evidence that the deceased informed them that the accused, due to the illicit intimacy with one Vasantha, ill-treated her and he used to beat her. From the evidence of P.Ws.1 to 3 it is clear that there were frequent quarrels between the accused husband and the deceased wife.

11. On the date of occurrence, it is the evidence of P.W.3, that the deceased, along with the children, came to her house at Thandayankottai and told about the ill-treatment suffered by her at the hands of the accused and at about 8.00 p.m., apprehending that the accused would beat her if she did not go home and he would also beat P.W.3 if she questioned the same, left for her house, stating that she would either live or die at her place itself. Immediately, P.W.3 went to the house of P.Ws.1 and 2 at Karpanankollai, which is 3 miles away from her place and informed them. The visit of the deceased to P.W.3's house on the date of occurrence is also spoken to by P.Ws.1 and 2, which remain unshaken in cross examination. From the evidence of P.Ws.1 to 3 it is clear that there were frequent quarrels between the accused and the deceased.

12. The medical evidence of autopsy doctor P.W.5 and Ex.P6 post mortem certificate would go to show that the deceased sustained lacerated injuries and contusions. P.W.5 doctor opined that the deceased would appear to have died of head injury. It is therefore clear that the deceased was done to death in a cruel manner and it is a homicidal violence.

13. To prove the guilt of the accused and to link the accused with the crime, the prosecution rests its case on P.Ws.1 and 2. It is clear from P.W.3 that on the date of occurrence the deceased came to her house and left by 8.00 p.m. by saying that if she did not go home, the accused would kill her. The deceased also narrated P.W.3 about the quarrels with the accused husband. Hence, it is quite natural that P.W.3 being maternal aunt of the deceased, apprehending untoward incident, went and alerted P.Ws.1 and 2, the parents of the deceased.

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14. It is the claim of P.Ws.1 and 2 that being informed by P.W.3, they went to the house of deceased and saw the accused questioning the deceased as to why she went to the house of P.W.3 without informing him and beat her with wooden stick, M.O.2 and also inflicted cut injuries with knife, M.O.1. It is their further evidence that on seeing this, they questioned the accused, who, in turn, threatened them saying that they would also meet the same fate and he left the scene of occurrence. P.Ws.1 and 2 have stated that they went near the deceased and found her dead.

15. It is the contention of learned counsel for the accused that no independent witness was examined to prove the prosecution case. According to him, when P.Ws.1 and 2 raised alarm, the neighbours would have come and seen the occurrence and the non-examination of neighbours is a fatal to the prosecution case. Admittedly, the occurrence took place at about 10.00 p.m., in front of the house of the deceased. When the case of the prosecution is that P.Ws.1 and 2 raised alarm on seeing the occurrence, normally, the neighbours would have rushed to the scene and witnessed the occurrence or at least, seen the accused running from the scene. Even in Ex.P1 complaint it is not stated that the occurrence was witnessed by villagers. According to P.Ws.1 and 2, they stayed there and next day morning only went and informed one Ooran Rajendiran about the occurrence, who asked them to inform the Village Administrative officer. The said Ooran Rajendiran has not been examined as witness. P.W.4, Village Assistant, though turned hostile, stated that P.Ws.1 and 2 came and informed that the accused murdered the deceased and he took them to the police station next day where P.W.1 gave Ex.P1 complaint. It is not the case of prosecution that there are no neighbours in and around the house of deceased and on the other hand, as per Ex.P9, there are four houses within 10 to 25 feet. But, there is no explanation by the prosecution for non-examination of neighbours.

16. The presence of P.Ws.1 and 2 at the scene is also doubtful as claimed by the learned counsel for the accused. It is the prosecution case that being informed by P.W.3, P.Ws.1 and 2 came to the house of deceased. As spoken to by P.W.3, the deceased left P.W.3's house at about 8.00 p.m. Then only, P.W.3 left her house to inform P.Ws.1 and 2. In her cross, P.W.3 has stated that if she starts at dawn, she would reach P.Ws.1's house at about 11.00 a.m. If that be so, P.W.3 would not have reached P.W.2's house at about 8.30 p.m. on the date of occurrence as claimed by P.W.1.

17. The place of P.Ws.1 and 2, viz. Karpanankollai is 3 miles (5 kms) away from the place of the deceased. As per the evidence of P.W.3, she went to the house of P.Ws.1 and 2 immediately after the deceased left her house at 8.00 pm. Even assuming that P.W.3 reached the house of P.Ws.1 and 2 at 9.00 p.m. and P.Ws.1 and 2 started from their place immediately, they would have taken minimum

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two hours to reach the place of the deceased. If that be so, they would have reached the place of occurrence by 11.00 pm. But, the case of prosecution is that the occurrence took place at about 10.00 p.m. It therefore creates a serious doubt in our mind as to the presence of P.Ws.1 and 2 at the time of occurrence. It is also not believable that P.Ws.1 and 2 after witnessing the occurrence, were keeping silent till the morning even to inform about the occurrence to the neighbours, particularly when the deceased is nonetheless their daughter. The defence theory that P.Ws.1 and 2 reached the place of occurrence on the next day and then they informed Ooran Rajendran, who directed them to inform to the Village Administrative Officer at Odukathur, cannot be ruled out.

18. Admittedly, the complaint Ex.P1 was lodged on 23.4.2002 at 9.00 a.m., when the occurrence took place on 21.4.2002 at 10.00 p.m. The prosecution has claimed that P.Ws.1 and 2, after the occurrence remained near the dead body till dawn and then, they informed the same to one Ooran Rajendiran who asked them to inform the same to the Village Administrative Officer, who in turn, directed them to give police complaint and since it became late night, they went to police station next day and the complaint was lodged on 23.4.2002. However, as observed earlier, P.Ws.1 and 2 would not have reached the place of occurrence as claimed and witnessed the occurrence and they would have reached the scene next day and consequently, the delay occurred in lodging the complaint. As rightly pointed out by the learned counsel for the accused, the occurrence would not have occurred as claimed by prosecution and the delay was not properly explained by the prosecution.

19. Besides the above, the evidence of P.Ws.1 and 2 are that the accused beat the deceased with wooden stick M.O.2 and inflicted cut injuries with knife, M.O.1. But, as per Ex.P6, post mortem certificate, there is not even a single cut injury, to corroborate the overt act attributed to the accused with knife.

20. It is the evidence of P.W.1 that at the time of occurrence she saw the accused wearing lungi. But, the investigating officer claimed that he seized the knife and khaki shorts on the basis of confession given by the accused at the time of his arrest. Ex.P15 serologist's report shows that the khaki shorts as well as knife contain human blood. If the statement of P.W.1 that she saw the accused wearing lungi and seizure of khaki shorts are found to be true, assuming over the khaki shorts, the accused was wearing lungi, unless the lungi got bloodstain, the khaki shorts would not have contained blood stain, there is no proper explanation on behalf of the prosecution for not recovering the blood stained lungi while they recovered the blood stained khaki shorts. If the accused destroyed the lungi since it contained blood stain to erase the evidence against him, for the same reason he would have also

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destroyed khaki shorts. Since the accused had not destructed the khaki shorts, there is no explanation for not recovering the lungi.

21. From the evidence of P.Ws.1, 2 and 3, though the motive stands proved, the presence of P.Ws.1 and 2 at the time of occurrence cannot be believed. When the evidence of P.Ws.1 and 2 are not believable on which the prosecution rests its case, it is not safe to convict the accused for the death of the deceased, though it is a heinous crime. The trial Court proceeded to believe the version of P.Ws.1 and 2, without adverting to the above discrepancies, and wrongly came to the conclusion that it is the accused who has committed the crime. Therefore, the conviction and sentence imposed by the trial Court are liable to be set aside.

In the result, the appeal is allowed and the conviction and sentence imposed on the appellant are set aside. The appellant is directed to be set at liberty forthwith unless he is required in connection with any other case. The Madras High Court Legal Services Committee is directed to pay a sum of Rs.4,000/- to the Amicus Curiae.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kpl

To

1.The Principal Sessions Judge,
Vellore

2. The Judicial Magistrate, Vaniyambadi.

3. Do Thro The Chief Judicial Magistrate, Vellore.

4. The Superintendent,
Central Prison,
Vellore .

5. The Director General of Police,
Chennai-4.

6. The District Collector,
Vellore.

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7.The Public Prosecutor,
High Court, Madras.

8.The Inspector of Police,
Kalasapakkam Police Station
Tiruvannamalai District.

9. The Member Secretary,
Tamilnadu Legal Services Committee,
High Court Buildings, Chennai-104.

10. The Section Officer,
Criminal Section,
High Court, Madras (for information)

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